IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Family Court Appeal no. 72 of 2004

1. Sau.Sunanda Dnyandeshwar More
   Age 34 years, Occ: Nil
   residing at C/o Shri Maruti
   Tulaba More
   S.No.12, Yerawada, Pune 6

2. Chi.Rohan Dnyaneshwar More
   Age 15 years, Occ:Education

3. Ch.Snehal Dnyaneshwar More
   Age 13, Occ: Education.

No.1 is guardian of Nos.2 and 3 ..Appellants

vs.

Shri Dnyaneshwar Maruti More
Age 36 years,Occ: business
residing at S.No.11, Parnakuti
Payatha in front of Darbar
Bakery, Yerawada,
Yerawada Pune 6 ...Respondent

Ms.P.P.Chavan i/b Mrs.Manjula Rao for appellants
Mr.V.B.Nighot for respondent.

CORAM: S.B.MHASE &
S.R.SATHE JJ.
18th September,2006

ORAL JUDGMENT:(Per S.B.MHASE J.)

1. Heard the learned Counsel for the parties.

2. This appeal is directed against the judgment and decree passed in Family Court proceedings P.C.No.94 of 2000 on 31st May, 2001 by the Judge, Family Court, Pune, thereby directing the respondent/husband to pay maintenance at the rate of Rs.200/- p.m. to appellant no.1 under sec.18

and Rs.500/- p.m. to each of appellant nos.2 and 3 being the children of the respondent from the date of petition under section 20 of the Hindu Adoption and Maintenance Act, 1956. Being aggrieved and dissatisfied with the said judgment and decree the appellants, namely, the wife and children of the respondent have preferred the present appeal challenging especially the quantum of maintenance fixed by the Family Court being inadequate and disproportionate to the assets and income of the respondent.

3. So far as the relationship of the appellants with the respondent is concerned there is no dispute. Appellant No.1 Sunanda is the wife of respondent while appellant no.2 Rohan is the son and appellant no.3 Snehal is the daughter of respondent from appellant no.1. The grievance of the appellant no.1 is that the respondent had developed illicit relations with one Sunita and the respondent ran away for a period of one month and thereafter started residing with Sunita in the house wherein the appellants and respondent were staying along with the mother of the respondent and, therefore, ultimately mother of the respondent told the respondent to reside separately and, therefore, respondent along with the said Sunita is

residing separately in the premises of S.T.D.booth. It is further case of the appellants that since the respondent started residing separately he has neglected to maintain the appellants and, therefore, the appellant no.1 is claiming maintenance from the respondent for herself and for the children. According to her, the respondent is having a footwear shop in the name and style of More Footwear. He is also having S.T.D.booth in the building owned by him. According to the appellants, first floor of the said building has been given on rent. The appellants have further contended that the respondent is having gas agency in the name and style of Mahagas and he is also having business of Sadguru Video so as to give cable connections. It is further averred that the respondent is possessed of a rickshaw bearing No.MH-12-RA-8877 and is also earning therefrom. According to the appellants the income of the respondent is about Rs.20,000 to Rs.25,000/- p.m. The appellants, therefore, have claimed maintenance at the rate of Rs.2000/- p.m. for herself and at the rate of Rs.1500/- p.m. each for appellant nos. 2 and 3. Appellant no.1 has further claimed a separate residence and/or Rs.5,00,000/- so as to have a separate residence.

4. The respondent has filed his written statement and denied all the allegations. The respondent has also denied that the respondent is staying with Sunita. The respondent has claimed that the respondent is driven out of the house by the mother of the respondent. The respondent has further averred that the shop More Footwear is being run by the appellant. He has further denied that there are two S.T.D.booths at Yerawada and that the premises have been rented out by the respondent. He has also denied that he is running the business of cable operator in the name and style of Sadguru Video. He categorically denied that his income is Rs.20,000/- to Rs.25,000/-

5. In order to prove her case appellant no.1 has examined herself at Exh.13. She has also examined her mother inlaw i.e. mother of the respondent at Exh.20 as also her sister in law Jana at Exh.27. To rebut the said evidence the respondent has examined himself at Exh.30. No other witness has been examined by the respondent.

6. P.W.2 Shantabai who is the mother in law of appellant no.1 and mother of respondent has also supported appellant no.1. Both appellant no.1 and P.W.2 Shantabai have stated about the marriage of

appellant no.1 with the respondent and birth of appellant nos. 2 and 3. Both of them have stated that the respondent had developed friendship with one Sunita and they ran away from the house and thereafter the respondent started residing with Sunita in the house, however, the mother of the respondent asked him to reside separately alongwith Sunita. Thus the fact remains that the respondent is staying separately along with Sunita. The said story is also deposed and supported by the sister in law namely Jana whose testimony is at Exh.27. Therefore, it is clearly established that the respondent is having illicit relationship with the said Sunita and is staying separately with the said Sunita and thus the respondent has abandoned appellant no.1.

7. Appellant no.1 has further deposed, which is supported by her mother in law and sister in law, that the respondent is not looking after the appellants and is not providing any maintenance to them. Therefore, we find that the Family Court was justified in holding that appellants are entitled to stay separately from the respondent and in that capacity appellant no.1 is entitled to claim maintenance under sec.18 and 20 of the Hindu Adoption and Maintenance Act, 1956.

8. The Family Court has concluded that there are good grounds to stay separately and has further observed that the respondent has neglected to maintain the appellants. The said finding of the Family Court is just and proper finding in the facts and circumstances and evidence on record.

9. The main attack on the part of the appellant no.1 is that the quantum fixed by the Family Court is completely disproportionate to the assets and income of the respondent. The learned Counsel submitted that the business of More Footwear is being looked after by respondent husband. He is also running the business of cable connections in the name and style of Sadguru Video and he is possessing a gas agency in the name and style of Mahagas. It is further stated by the learned Counsel that the respondent is having a rickshaw and he has given the same on rent to some one and he is earning out of running of the rickshaw. The learned counsel for the respondent tried to submit that the business of More Footwear stands in the name of appellant no.1. The learned Counsel submitted that there is no Sadguru Video or Mahagas agency or a rickshaw standing in the name of respondent as alleged by appellants. He also

submitted that there are no premises with the respondent which can be rented out.

10. It is interesting to note that though it is the duty of the respondent to bring on record as to what is his income, except his oral version he has not brought on record any material to show what is his income. It reveals from the evidence of P.W.1 Sunanda that the respondent owns the shop of More Footwear which the respondent has rented out and is getting the income of Rs.2500/- p.m. So far as this aspect is concerned there is no dispute that the shop is owned by the family. However, the case of the respondent is that the said shop stands in the name of appellant no.1 and appellant no.1 is taking income of the said shop. However, when it was deposed by appellant no.1 that the said shop is owned by the respondent and it has been rented out, there is no cross examination on this point by the respondent. Thus as a result of rule of nontraverse the said testimony is a good testimony and is to be accepted. It is further interesting to note that the appellants have tried to bring on record some evidence in respect of the said shop being rented out. However, the said witness namely P.W.4 Shivram Bhagat has not supported her case since he denied knowledge of certain documents

which were tried to be proved. However, in respect of the said shop except the fact that the said shop stands in the name of the appellant no.1 the respondent has not stated anything in his evidence. It is very interesting to note that even if the licence stands in the name of appellant no.1 the said licence has been produced by the respondent. That shows that the respondent is having control over the business and the said More Footwear shop is being looked after by the respondent. Therefore, we are not inclined to accept the theory of the respondent that appellant no.1 is looking after the said shop. It is further to be noted that so far as Sadguru Video or gas agency is concerned the appellant has deposed about the same in her examination in chief, however, respondent has not cross examined appellant in this respect and surprisingly in his examination in chief he is not stating anything about the non existence of such businesses. Only in the cross examination suggestions were given and he has denied those suggestions, however, that is not sufficient. Therefore, we find that the respondent is having business of cable operator and also gas agency. We also find in the facts and circumstances and in view of the allegations it would have been possible for the respondent to produce certificate from the

gas agency to show that the said business is not being looked after by the respondent. He has stated about Kanifnath bakery, however, evidence shows that Kanifnath bakery is owned by the sister inlaw of appellant no.1. Respondent's sister Jana herself entered into the witness box and it has been denied by her that initially the licence in respect of the bakery was in the name of appellant. She has stated that the bakery was standing in her name since 1998 and, therefore, it is established that Kanifnath bakery is the business of Janabai namely sister in law of the appellant. So far as the rickshaw is concerned, the respondent has denied that he is possessed of any rickshaw, however, surprisingly suggestion is given that he is earning by driving the rickshaw. That shows that he is having rickshaw with him as alleged by the appellants. Thus, we find that the respondent is having multiple business activities as alleged by the appellants. It is further supported by the testimony of the mother of the respondent. It is very interesting to note that the mother of the respondent who is the mother in law of appellant no.1 has come forward to support the case of the appellants as against the respondent. At the eleventh hour attempt is being made by the respondent to submit that the said Shantabai is the

step mother of the respondent. However, it is to be noted that in the written statement such allegation has not been made as against the said Shantabai. Not only that in the cross examination also there is no suggestion given and/or any evidence was brought on record that the said Shantabai is the step mother of the respondent. It is further interesting to note that in the examination in chief also the respondent has not deposed that Shantabai is the step mother of the respondent and, therefore, submission of the learned Counsel which is developed across the bar that the said Shantabai is the step mother of the respondent is the legal brain since she has not supported the case of the respondent. We find that the mother of the respondent has come forward to support the case of the appellants as against the respondent and, therefore, we have no hesitation in accepting the testimony of the appellants in toto and more specifically on the point of source of income of the respondent. In the facts and circumstances of the case we find that the monthly income of the respondent is Rs.20,000/- to Rs.25,000/- as stated by the appellant and the Family Court has committed an error in not recording the finding to that effect. The Family Court has taken erroneous view of the matter that

More Footwear shop and bakery is being looked after by the appellant. It requires to be further observed that income of Rs.600/- which has been taken to be the income of the appellant by the Family Court is also erroneous one. In the facts and circumstances when the respondent is not supporting the family she was required to do the temporary work and to earn for survival. That does not mean that, that is the income of the appellants to support her family and that will not absolve the respondent from the liability of payment of maintenance. When we are considering the question of maintenance under the Hindu Adoption and Maintenance Act, 1956 we have to take into consideration the income, standard of living of the parties, status of the parties in the society and thereafter fix the maintenance. We find that the respondent is having multiple businesses in the society. His business are of gas agency, cable operator and footwear shop which are respectable businesses in the society. What we find that since we have noted that the income of the respondent is about Rs.20,000/- to Rs.25,000/- we find that the quantum of maintenance fixed at the rate of Rs.200/- p.m. for appellant no.1 and Rs.500/- for each of appellant nos.2 and 3 is absolutely and grossly inadequate. In the facts and circumstances

of the case we find that Rs.2000/- p.m.for appellant no.1 and Rs.1500/-p.m. each for appellant nos.2 and 3 will be appropriate maintenance.

11. Learned counsel for respondent tried to submit that appellant nos.2 and 3 have attained the majority and,therefore, they are not entitled to claim maintenance. But what we find that appellant no.2 attained majority on 27th February, 2002 and appellant no.3 attained majority on 5th December, 2004 and till the said dates the respondent is under obligation to make payment and, therefore, we reject the submission of the learned counsel that now it is not necessary to grant maintenance. It is further to be noted that appellant no.3 being the daughter is entitled to claim maintenance till the date of her marriage. It is reported across the bar that appellant no.3 got married in May 2006. Thus, what we find that taking into consideration the facts and circumstances of the present case that appellant no.3 is entitled to get maintenance from the respondent till May 2006 and appellant no.2 is entitled for maintenance till he attained majority i.e. till 27th February, 2002 and so far as appellant no.1 is concerned she is entitled to claim maintenance from respondent till

her life time and/or till the time she gets remarried. Therefore, we pass the following order.

. Appeal is allowed.

. Decree of the Family Court is set aside and in its place the following decree is substituted.

. Respondent shall pay maintenance to appellant no.1 at the rate of Rs.2000/- p.m. from the date of her application. It is further directed that the respondent shall pay maintenance at the rate of Rs.1500/- p.m. each to appellant nos.2 and 3 from the date of application till 27th February, 2002 to appellant no.2 and till May 2006 to appellant no.3. Arrears of maintenance as per this decree shall be paid within a period of 3 months from the date of decree. Cost of the appeal is quantified at Rs.5000/- and the respondent is further directed to pay cost of Rs.5000/-

(S.R.SATHE J.) **(S.B.MHASE J.)**